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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1963.

NO. 1016

CERMAK CLUB, INCORPORATED
and
FROLIC'S INCORPORATED,
Petitioners,

vs.

ILLINOIS LIQUOR CONTROL COMMISSIONERS,
Respondents.

(Petition for writ of *certiorari* to the Supreme Court of Illinois.)

RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Room 900,
Chicago (1), Illinois, (FI 6-2000),
Attorney for Respondents.

RAYMOND S. SARNOW,
RICHARD A. MICHAEL,
Assistant Attorneys General,
Of Counsel.

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THE QUESTION PRESENTED.

Did the Illinois Supreme Court deny petitioners due process of law when they denied petitioners' contentions that previous acquittals in criminal trials were *res judicata* in a subsequent civil liquor license revocation proceeding

where the denial rested on grounds that the record did not establish that there had been an acquittal on every date a violation had been found to exist by the Illinois Liquor Control Commission?

STATEMENT OF FACTS.

A fuller exposition of the facts is found in the opinion of the Illinois Supreme Court in this case, (30 Ill. 2d 90, at pp. 91-92):

> "The Illinois Liquor Control Commission revoked the liquor licenses of Cermak Club, Inc., and Frolic's, Inc., upon findings that each of the licensees had permitted 'lewd dances in the nude' in its licensed premises on 13 specified dates in 1961 and 1962, and had also permitted solicitation for prostitution in its licensed premises on six of those dates. The licensees instituted administrative review proceedings in the circuit court of Cook County in which they prayed that the order revoking their licenses be reversed. The circuit court denied the relief prayed, and the licensees have appealed directed to this court. The cases have been consolidated."

REASONS FOR DENYING THE WRIT

Petitioners contend that if the Supreme Court of Illinois had applied the doctrine of *res judicata* in the manner they urge there would have been no evidence on which the petitioners could be found to have violated the Illinois Liquor Control Law. It is further argued that to revoke petitioners' licenses where there is no evidence in the record to support the revocation violates due process of law under th Fourteenth Amendment.

Without here reaching the issue of whether the doctrine of *Garner* v. *Louisiana*, 368 U. S. 157 and *Thompson* v. *City of Louisville*, 362 U. S. 199, applies to a civil liquor license

revocation, it is clear that if the doctrine of *res judicata* is not applied in the manner urged by petitioners, there was more than sufficient evidence to support the revocation.

Thus the petitioners' sole argument is that the doctrine of *res judicata* was improperly applied by the Illinois Supreme Court. This contention raises no question under the Constitution or statutes of the United States.

Furthermore, the doctrine was properly applied by the Illinois Supreme Court. With regard to this issue, the Illinois Supreme Court said at 30 Ill. 90, 93:

> "The basic grievance of the licensees appears to be that on two of the 13 dates specified in the findings of the Commission, their employees had been arrested and 'charged with violations of law substantially as set forth' in the revocation proceedings. On both of these occasions the employees were found not guilty. On this ground the licensees argue that revocation of their licenses was barred by collateral estoppel. And because they interpret paragraph 5 of Rule 3 as requiring the Commission to disregard a prior judgment of acquittal, they assert the invalidity of that paragraph of the rule.
>
> We do not find it necessary, upon this record, to decide the question that the licensees seek to raise as to the validity of paragraph 5 of Rule 3. For even if we assume that their position is correct, and that the Commission is bound by the two prior judgments of acquittal upon which they rely, the propriety of the revocation and the correctness of the judgment of the circuit court in this case would not be affected. As to each licensee, the Commission's findings on 11 of the 13 allegations of lewd conduct on the licensed premises, as well as its findings of solicitation for prostitution on six occasions, would remain unchallenged. And those unchallenged findings are adequate to sustain the orders of revocation."

The testimony cited by petitioners on pages 7 through 10 of their petition in no way shows this conclusion to be erroneous. However, it should be noted that this testimony was not properly before the Illinois Supreme Court because petitioners failed to include it in their abstract, as required by the rules of that court.

Finally, even if the court had found that defendants were tried and acquitted on every occasion the Illinois Liquor Control Commission relied upon for the revocation of their licenses, the order was still correct. This court has already announced the rule that an acquittal in a criminal action is not *res judicata* in a subsequent criminal action on the same grounds. *United States* v. *National Association of Real Estate Boards*, 339 U. S. 486 and *Helvering* v. *Mitchell*, 303 U. S. 391.

Conclusion.

For the reasons urged herein, respondents respectfully request that the petition for *certiorari* be denied.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago (1), Illinois, (FI 6-2000),
Attorney for Respondents.

RAYMOND S. SARNOW,
RICHARD A. MICHAEL,
Assistant Attorneys General,
Of Counsel.